

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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CITIZENS FOR CONSUMER JUSTICE,  
COLORADO PROGRESSIVE COALITION,  
FLORIDA ALLIANCE FOR RETIRED  
AMERICANS, HEALTH CARE FOR ALL, INC.,  
MASSACHUSETTS SENIOR ACTION COUNCIL,  
MASSPIRG, MINNESOTA SENIOR  
FEDERATION, NEW JERSEY CITIZEN ACTION,  
NEW YORK STATE WIDE SENIOR ACTION  
COUNCIL, PENNSYLVANIA ALLIANCE FOR  
RETIRED AMERICANS, VERMONT PUBLIC  
INTEREST RESEARCH GROUP, WEST  
VIRIGINA CITIZEN ACTION, AND WISCONSIN  
CITIZEN ACTION,

Plaintiffs,

v.

ABBOTT LABORATORIES, INC., ALLERGAN  
WORLDWIDE, ALPHA TERAPEUTIC CORP.,  
AMERICAN BIOSCIENCE, INC., AMERICAN  
HOME PRODUCTS, AMGEN, INC.,  
ASTRAZENECA US, AVENTIS PHARMA,  
BAYER AG, BAXTER INTERNATIONAL, INC.,  
BRITSOL-MYERS SQUIBB CO., CHIRON,  
FUGISAWA HEALTHCARE, INC.  
GLAXOSMITHKLINE, PLC, GENSLA SICOR  
PHARMACEUTICALS, INC., GLAXO  
WELLCOME, INC., GLAXO WELLCOME, PLC,  
IMMUNEX CORP., ICN PHARMACEUTICALS,  
INC., HOESCHT MARION ROUSSEL, INC., ELI  
LILLY AND COMPANY, ONCOLOGY  
THERPEUTICS NETWORK CORP.,  
PHARMACIA CORP., SCHERING-PLOUGH,  
CORP., SICOR, INC., SMITHKLINE BEECHAM  
CORPORATION, TEKEDA CHEMCIAL  
INDUSTRIES LTD., TAP PHARMACEUTICAL  
PRODUCTS, INC., AND JOHN DOES 1 – 200

Defendants

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Case No. 01-12257 PBS

**AFFIDAVIT OF KEVIN C. MCGOVERN**

NOW COMES Kevin C. McGovern, being duly sworn, hereby states as follows:

1. I am employed by Fallon Community Health Plan (hereinafter "FCHP") as an assistant vice president, a position I have held since 2002. My responsibilities in this position include performing and supervising accounting and financial reporting, accounts payable management and oversight, billing and collecting to groups and individual members, cash and investment management. I joined FCHP in 1993.
2. Between 1984 and 1993 I was employed by the Fallon Clinic (hereinafter "FC") as an accounting manager, and then as assistant controller. My duties included, in part, overseeing payment of FC invoices.
3. As a result of my employment over the last twenty-two years at FCHP and FC I am generally familiar with the organizational structure of both entities, the services each entity provides, and the relationship each organization has with, if applicable, its vendors, members and providers.
4. FC has been in existence since 1929 and principally provides medical services to patients.
5. FCHP is a health maintenance organization which was incorporated in May 1975. Since its inception FCHP has provided health insurance to employer groups and individuals whereby members can receive benefits including, but not limited to, pharmaceuticals and physician care. FCHP members can receive physician services by physicians not employed by FC. FC formerly owned pharmacies until December 2002. Since approximately 1997 FCHP members do not have to obtain prescribed medications from FC pharmacies.

6. I have reviewed the document production request issued by Dey, Inc. to FCHP. Some of the requests explicitly state (requests six and ten) or imply (request seven) that FCHP directly purchased pharmaceuticals from manufacturers.<sup>1</sup>
7. During the period of my employment at FC the Clinic had contractual relationships with drug wholesalers who purchased drugs which were provided to pharmacies owned by the Fallon Clinic.
8. FCHP members receive insurance coverage for prescribed drugs. FCHP members receive medications from a prescribing physician, hospital or pharmacy. FCHP does not directly purchase drugs from manufacturers. On behalf of its members FCHP has reimbursed or presently reimburses physicians; physician employers (such as the Fallon Clinic); pharmacy benefit managers (hereinafter “PBM”); and/or hospitals.<sup>2</sup>
9. I am aware drug manufacturers provide rebates to drug purchasers and pharmacy benefit managers. FCHP receives no direct rebates from drug manufacturers.

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<sup>1</sup> These document production requests states as follows:

6. All documents, including electronic transaction records and contracts concerning your direct purchases of drugs from drug manufacturers, wholesalers, PBMs, specialty pharmacies, or any other person or entity.
7. Documents regarding or reflecting a scope of operation of any staff – model HMO, including documents reflecting the time period of its operation, the number of patients treated through its facilities, the number of its members, the volume of its drug purchases, the reasons and rationale behind your decision to initiate or cease its operation.
10. Summary reports regarding rebates received by you from drug manufacturers.

<sup>2</sup> For a time between 1991 and the present FCHP reimbursed pharmacies which directly purchased drugs from manufacturers. Since approximately 1997 PBMs have purchased pharmaceuticals for pharmacies used by FCHP members and FCHP reimburses the PBMs.

Signed under the pains and penalties of perjury this 26<sup>th</sup> day of January 2006.

  
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Kevin C. McGovern

STATE OF MASSACHUSETTS  
Worcester COUNTY

On this 26<sup>th</sup> day of January 2006, before me, the undersigned Notary Public, personally appeared Kevin C. McGovern, in his individual capacity, known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing instrument, and acknowledged that he signed the same as his voluntary act and deed for the purposes therein contained.

  
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Notary Public

My Commission Expires: 5/5/2011